

THE WHITE HOUSE
WASHINGTON

January 19, 1973

MEMORANDUM FOR:

MEMBERS OF ICRC PROCEDURES
WORKING GROUP
Robert T. Andrews

STAT

Douglas Marvin
Fredericka Paff
Mark A. Spiegel

FROM:

RICHARD C. TUFARO *Q*

SUBJECT:

RE-DRAFT OF PROCEDURES

In anticipation of the next meeting of the ICRC Procedures Working Group, I have prepared the attached re-draft of the procedures. I would appreciate your preparing a draft of these procedures indicating any stylistic or substantive changes which the ICRC member whom you represent may wish to suggest.

The next meeting of the Working Group will be held on Thursday, January 25, 1973 at 2:00 P.M. in Room 115 of the Old Executive Office Building.

DRAFT

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Richard C. Tufaro

INTERAGENCY CLASSIFICATION REVIEW COMMITTEE

Section 1. Purpose. This regulation establishes the conditions and procedures under which the denial of a request for the declassification of classified documents ten (10) or more years old may be appealed to the Interagency Classification Review Committee, hereinafter referred to as the Committee.

Section 2. Establishment and Jurisdiction of the Committee.

A. Establishment and Composition. Pursuant to Section 7 of Executive Order 11652, "Classification and Declassification of National Security Information and Material" (37 FR 5209, March 10, 1972), hereinafter referred to as the Order, the Committee has been established by the National Security Council Directive Governing Classification, Downgrading, Declassification and Safeguarding of National Security Information (37 FR 10053, May 17, 1972), hereinafter referred to as the Directive, which both became effective on June 1, 1972. The Committee is composed of a Chairman designated by the President, the Archivist of the United States, * Senior representatives of the Departments of State, Defense and Justice, the Atomic Energy Commission, the Central Intelligence Agency and the National Security Council staff. Representatives of other Departments in the executive branch may be invited to meet with the Committee on matters of particular interest to those Departments, but shall have no vote.

*A recommendation to this effect should be made to the President that he ~~Approved For Release 2002/06/05 : CIA-RDP77-00389R000100070043-2~~ Appoint the Committee.

In the absence or incapacity of the Chairman, an Acting Chairman chosen by the Committee will act as Chairman for all purposes. A quorum of seven members, or their designated alternates, is required to consider or act on appeals to the Committee. Committee decisions in favor of declassification, in whole or in part, shall require a majority vote of the members or their designated alternates present.

B. Jurisdiction. The Committee shall have jurisdiction to consider and act upon appeals from a determination by a Departmental Committee or the Archivist of the United States that national security information and material classified by action taken pursuant to E. O. 11652, or its predecessor Orders, requires continued classification under Section 5 of the Order. The Committee shall have no jurisdiction of appeals involving information classified by the Atomic Energy Act of 1954, as amended. Hereafter, the terms "Departmental Committee" and "Department" include the Archivist, where appropriate.

Section 3. Requests for Declassification.

A. Notice of an Appeal. An appeal from a Departmental Committee's denial of a declassification request involving classified documents which are ten (10) or more years old must be submitted to the Executive Director, Interagency Classification Review Committee, Executive Office Building, Washington, D.C. 20506 within sixty (60) days of the date the Departmental Committee's denial of a declassification request is received. The appeal shall include the following information: an

identification or description of the document or documents for which declassification was requested and a statement of the Department's action denying the request. Whenever possible, copies of all correspondence to and from the department concerned and a statement of the reasons why the requester's appeal should be granted should also be included.

B. Exhaustion of Other Remedies. No appeal will be considered until the requester has exhausted all administrative remedies afforded him by the regulations of the Department concerned; provided however, that if the Departmental Committee has not acted within thirty (30) days of the date the request is appealed to the Departmental Committee the request[er may apply to this Committee for appropriate relief.] shall be determined denied, and the requester is thereupon entitled to appeal to the Committee. However, the request shall not be deemed denied if the Department has advised the requester that the request relates to documents requiring the review of one or more other Departments or foreign Governments.

C. Acceptance of Appeal. An appeal of a determination denying a declassification request involving classified documents which are ten (10) or more years old, shall be accepted for review by the Committee if, in the discretion of the Committee, the appeal raises important issues. The following indicate, but do not limit, the character of the reasons for accepting an application for review which the Committee will consider: the nature of the documents whose declassification is sought.

classified documents; the likelihood of an early public release as a result of declassification; and disagreement between Departments as to the proper classification of the information involved. To the extent required for this determination, the Chairman may request the Department concerned to furnish copies of the documents, a summary of their contents or other pertinent information. Requests for declassification which have been denied because the document has not been described with sufficient particularity to enable it to be identified, or because the record cannot be obtained with a reasonable amount of effort, will not be accepted by the Committee, as the denial is based on reasons other than its continuing classification. A requester whose appeal is not accepted for review by the Committee shall be promptly notified.

D. Consideration of Appeal. The requester will be notified whether his appeal has been accepted for review. The Department from whose decision the appeal has been taken and accepted by the Committee shall, upon request of the Chairman, furnish to the Committee ten (10) copies of the following: all correspondence to and from the requester, the decision of the Departmental Committee denying the request, and the classified documents in question.

E. Committee Review. Normally, appeals to the Committee will be considered in the order that they are accepted for appeal. The Committee's review of the record will be in closed session in order to facilitate full inquiry into matters that are still classified. The burden

of persuasion is on the Department to show that continued classification is required under the provisions of section 5 of the Order. Upon the Committee's determination that the requested material no longer warrants classification in whole or in part, the Chairman shall, in consultation with the affected Department or Departments, assure that appropriate action is taken.

F. Decision. The requester whose appeal has been accepted shall be notified in writing as to the Committee's decision. Should the appeal be denied in whole or in part, the notification shall include a statement, in unclassified form, explaining the reason for the decision.

Section 4. Effective Date. The effective date of this regulation shall be 1973.